

REMARKS

Entry of the foregoing, reexamination and further and favorable consideration of the subject application in light of the following remarks are respectfully requested.

By the present amendment claims 56, 57, 59 and 61-65 have been canceled without prejudice or disclaimer of the subject matter described therein. Claims 66 and 67 have been amended. Support for the amendments to claims 66 and 67 can be found throughout the specification and original claims.

No new matter has been added by the present amendment. Applicants reserve the right to file a continuation or divisional application directed to any subject matter which may have been canceled in this application.

The Office action indicates that a copy of the reference referred to as Sussenbach in the Information Disclosure Statement filed May 26, 2005 has not been considered as a legible copy is required. Applicants state that a copy of each of the listed documents was provided as shown by the attached copy of the post card that was date stamped by the U.S.P.T.O., which indicates that the correct number of documents was submitted. Nevertheless, another copy of Sussenbach is provided herewith together with an Information Disclosure Statement, additional documents and the appropriate fee. Consideration and acknowledgement of all the submitted documents is respectfully requested.

Turning to the merits of the Office Action, *ex parte* prosecution has resumed in this application following the termination of Interference Nos. 104,820, 104,821, 104,822, 104,823, 105,046 and 105,821. Claims 56, 57, 59 and 61-65 were finally disposed of in Interference 105,821. Accordingly, claims 56, 57, 59 and 61-65 have been canceled in this application.

Claims 66 and 67 stand rejected under 35 U.S.C. § 102(e) as allegedly anticipated by Gregory et al. (U.S. Patent No. 5,670,488). Claims 66 and 67 also stand rejected under 35 U.S.C. § 103 as allegedly unpatentable over Berkner (*Curr. Top. Microbiol. Immunol.* 158:39-66, 1992) in view of Bridge et al (*Viol.* 174:345-53, 1990).

The Examiner has stated that both rejections would be overcome by amending the claims to unequivocally indicate that the deletion in either E1 or E4 alone causes the vector to be replication defective, i.e. the vector is doubly defective for replication, or that complementation of both the E1 and E4 deletions *in trans* is required for preparing the adenovirus.

By the present amendment claim 66 is amended to recite that the “adenovirus is derived from a natural adenovirus in that it lacks at least part of the E1A, E1B, or both regions, and at least a part of the E4 region, so that it is defective for essential E1 and E4 functions and requires a cell line providing the E1 and E4 functions in trans for replication.” Claim 67 is amended to recite “the function of an essential adenoviral E1 gene and an essential adenoviral E4 gene are completely deleted by removing a part or all of said E1 gene and said E4 gene.”

Neither Gregory et al. nor the combination of Berkner and Bridge et al. teaches or suggests a vector as presently claimed. Accordingly, withdrawal of the rejection is respectfully requested.

Claims 66 and 67 have also been rejected under the judicially created doctrine of obviousness-type double patenting over claims of U.S. Patent No. 6,133,028, and provisionally rejected over claims in copending Application No. 09/725,720. Without agreeing to all of the allegations of the rejections, but simply in

order to expedite allowance of this application, terminal disclaimers are filed herewith, which render the rejections moot.

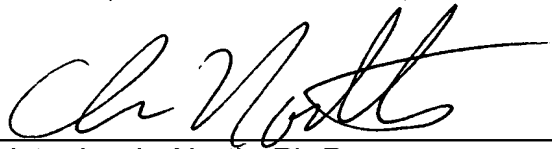
In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order and such action is earnestly solicited.

In the event that there are any questions relating to this Amendment and Reply, or the application in general, it would be appreciated if the Examiner would telephone the undersigned concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: November 7, 2005

By: 

Christopher L. North, Ph.D.
Registration No. 50,433

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620